



POLICY BRIEF



THE HYDE AMENDMENT: WHAT IT IS, IS NOT, AND COULD BE

In the post-*Roe v. Wade* world, Democrats and the Biden Administration are continuing their crusade to promote abortion. They are seeking to preempt state protections for pre-born babies,¹ asserting a right to federal funding of abortion,² and launching task forces for “reproductive health care.”³ Further, Democrats in Congress want to erode decades-long bans on taxpayer dollars being used to perform abortions by stripping pro-life amendments, like Hyde, from appropriations bills. Republicans in Congress can work to ensure the Hyde amendment is retained in appropriations bills each fiscal year and can work to pass legislation that permanently protects taxpayer dollars from going to abortions.

- **What is the Hyde Amendment?**

- The amendment is a prohibition on abortion funding that Congress regularly includes in its annual appropriations bill for the Departments of Labor, Health and Human Services, and Education, and related agencies (Labor-HHS-Ed).⁴ It is named after its original sponsor in 1976, Congressman Henry Hyde (R-IL), and is credited with saving over 2.4 million lives.⁵
- The amendment prohibits federal funding in the Labor-HHS-Ed bill from being used to pay for abortion except in the case of rape, incest, or to save the life of the mother.⁶
- It applies only to appropriations laid out in the Labor-HHS-Ed bill, including most notably Medicaid and Medicare. Although the Hyde amendment bars federal Medicaid and Medicare funding from being used to pay for abortions, there are 16 states who use their Medicaid funds coming from state taxpayer dollars to pay for abortions.⁷
- After being stripped from the House-passed appropriations bills, the Hyde amendment and other Hyde-type riders were included most recently in H.R. 2471, the Consolidated Appropriations Act, 2022, which made appropriations for fiscal year ending September 30, 2022.⁸

- **What funding is not protected by the Hyde Amendment?**

- There is a patchwork of other Hyde-type amendments and policies that have been included annually on a bipartisan basis in other appropriations bills. These in part include:
 - The Helms amendment, a part of the State, Foreign Operations division, prohibits U.S. foreign assistance funds from being used for abortion as a method of family planning or for motivating or coercing people to perform abortions or involuntary sterilization.⁹
 - The Biden amendment, named after then-Senator Joe Biden and a part of the State, Foreign Operations division, prohibits foreign assistance for biomedical research from being used to study abortion or involuntary sterilization.¹⁰
 - The Dornan amendment, a part of the Financial Services and General Government division, prohibits appropriated funds, both federal and D.C., from being used for elective abortion.¹¹
 - The Smith amendment, a part of the Financial Services and General Government division, prohibits federal funding of elective abortion through the Federal Employee Health Benefits program.¹²
- Hyde does not prohibit Obamacare subsidies from funding healthcare plans that include elective abortion coverage. These subsidies bypass Hyde by appropriating funds which are advanceable, refundable tax credits.¹³

- The Hyde amendment does not prohibit grant funds to be used for Planned Parenthood. In fact, Planned Parenthood received \$271 million in federal funds from fiscal years 2016 through 2018. In that time, they also committed 345,672 abortions.¹⁴ While Planned Parenthood claims these federal funds are not used for abortion, money is fungible, so it is impossible to distinguish the funds used for abortions from funds used for other services they provide.¹⁵
- **How can Congress create Hyde protections for all taxpayer dollars?**
 - Congress may consider legislation to permanently codify and broaden the Hyde amendment.
 - For example, H.R. 18, the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2021, would make Hyde-type restrictions on abortion funding permanent and applicable government-wide, rather than as a temporary policy “riders” attached to appropriations bills which need to be renewed on an annual basis. It would also prohibit Obamacare subsidized health plans from including coverage for abortions.

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¹ Whelan, Ed. “Federal Court Enjoins HHS EMTALA Guidance on Abortions in Texas.” *National Review*, August 27, 2022, <https://www.nationalreview.com/bench-memos/federal-court-enjoins-hhs-emptala-guidance-on-abortions-in-texas/>.

² Department of Health and Human Services, “Following President Biden’s Executive Order to Protect Access to Reproductive Health Care, HHS Announces Guidance to Clarify that Emergency Medical Care Includes Abortion Services,” July 11, 2022, <https://www.hhs.gov/about/news/2022/07/11/following-president-bidens-executive-order-protect-access-reproductive-health-care-hhs-announces-guidance-clarify-that-emergency-medical-care-includes-abortion-services.html>.

³ The White House, “FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services,” July 08, 2022,

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/> and Department of Justice, “Justice Department Announces Reproductive Rights Task Force,” July 12, 2022,

<https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>.

⁴ Congressional Research Service, “The Hyde Amendment: An Overview,” Updated July 20, 2022,

<https://www.crs.gov/Reports/IF12167?source=search&guid=4a603b1a1b0b4180b761ca8300b328cd&index=0>.

⁵ <https://sbaprofite.org/hyde> and Charlotte Lozier Institute, Addendum to Hyde @ 40: Analyzing the Impact of the Hyde Amendment, July 21, 2020,

<https://lozierinstitute.org/addendum-to-hyde-40-analyzing-the-impact-of-the-hyde-amendment/>

⁶ <https://sbaprofite.org/hyde>

⁷ Kaiser Family Foundation, “The Hyde Amendment and Coverage for Abortion Services,” March 5, 2020,

<https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/>.

⁸ Consolidated Appropriations Act, 2022, P.L. 117-103, March 15, 2022, <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>.

⁹ Congressional Research Service, “Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy,” Updated July 15, 2022,

<https://www.crs.gov/Reports/R41360?source=search&guid=cd5f091ca7bb4d809c64c026094e8157&index=0>.

¹⁰ Id.

¹¹ Charlotte Lozier Institute, “D.C. Statehood and Taxpayer Funding of Abortion,” April 13, 2021, <https://lozierinstitute.org/dc-statehood-and-taxpayer-funding-of-abortion/>.

¹² Congressional Research Service, “Abortion: Judicial History and Legislative Response,” Updated February 25, 2022,

<https://crsreports.congress.gov/product/pdf/RL/RL33467>.

¹³ Family Research Council, “Abortion Funding and Obamacare,” <https://downloads.frc.org/EF/EF14F35.pdf>.

¹⁴ Planned Parenthood, Annual Report 2018-2019, https://www.plannedparenthood.org/uploads/filer_public/2e/da/2eda3f50-82aa-4ddb-acce-c2854c4ea80b/2018-2019_annual_report.pdf.

¹⁵ Government Accountability Office, “Health Care Funding: Planned Parenthood Federation of America Affiliates’ Expenditures of Federal Funds, 2016 through 2018,” June 22, 2021,

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